



State of Wisconsin • DEPARTMENT OF REVENUE

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Scott Walker
Governor

Richard G. Chandler
Secretary of Revenue

February 15, 2012

Dear Chairman Van Roy:

Per the request of the Assembly Committee on Homeland Security and State Affairs, I am providing a written copy of my verbal testimony from last week's public hearing on Assembly Bill 425, relating to: retail licenses held by wineries. I have also included a response to a subsequent speaker's claim that contrary to my testimony, breweries are currently allowed to hold six additional retail licenses from which to sell their product. Again, the Department of Revenue does not have a position on this legislation, and our goal was to provide additional information for the Committee to consider.

Summary of DOR Testimony on Assembly Bill 425.

- Generally speaking, a person holding an alcohol beverage license or permit is a member of only one "tier" of alcohol production and sales and can be considered as a producer of alcohol, a wholesaler of alcohol beverages, or a retailer of alcohol.

-Current law provides a narrow exception that allows minimal participation on multiple tiers for those that hold a Wisconsin winery or brewery permit. Wineries are currently allowed to sell their product, without a wholesaler, at either one of two locations: 1) at the winery or 2) at another location via either a Class A municipal license (venues like a retail shop) or via a Class B municipal license (venues like a restaurant or bar).

-Breweries are allowed to sell their product at up to two locations: 1) at the location of the brewery and 2) at one off-site retail premises. No local municipal license is required for either the brewery or the off-site location.

-This bill would allow wineries to sell their product at up to 6 locations, which may or may not include the winery, at any combination of Class A or Class B establishments.

-If the Legislature were to pass Assembly Bill 425, two consequences would result.

- 1) The law would create a broader disparity regarding the number of locations that a Wisconsin winery can directly sell its product (6 total venues that may or may not include the winery) versus the number of locations that a Wisconsin brewery can directly sell its product (the brewery + 1 off-site retail location).
- 2) The law would be a significant departure from the Legislature's long-standing preference for the three-tier system, which the preamble to this chapter of statute extols for protecting public safety and enabling the proper collection of tax revenues. In essence, a winery would be allowed to participate on at least two tiers: as an alcohol beverage producer and also as a retailer. Other alcohol producers (distilleries and breweries), wholesalers, and retailers would not have the same ability to participate in multiple tiers to the same effect that wineries would be allowed under Assembly Bill 425.

Response to Additional Testimony.

After my testimony before the Committee, the subsequent speaker claimed that breweries were able to have up to six municipal licenses in addition to serving on the brewery's premises. That claim is incorrect.

Section 125.29 (3), Wis. Stats., reads (with underlined emphasis added by me):

"(3) AUTHORIZED ACTIVITIES. The department shall issue brewer's permits to eligible applicants authorizing all of the following:

...

(e) Notwithstanding ss. 125.04 (9) and 125.09 (1), the retail sale of fermented malt beverages that have been manufactured on the brewery premises or on other premises of the brewer for on-premise consumption by individuals at the brewery premises or an off-site retail outlet established by the brewer."

In this context, "an" refers to a single off-site retail outlet. Section 125.29, Wis. Stats. continues with a general prohibition of a brewer from also acting as a brewpub or holding restaurant licenses, except in limited cases where the brewer holds only an indirect interest in a restaurant **that does not serve the brewer's products** and earns less than 60% of its gross receipts from fermented malt beverages:

"(5) BREWPUBS. No person holding a brewpub permit under s. 125.295 may register as a brewer under this section.

125.29(6) (6) Restaurants. A brewer may operate a restaurant on the brewery premises and at an off-site retail outlet established by the brewer. A brewer may not hold a restaurant permit for the operation of a restaurant at any other location..."

The subsequent speaker may have been mistakenly referring to the maximum amount of brewpubs that a brewpub group may operate, which Section 125.295 (3) (a), Wis. Stats. limits to six. However, as noted above, a brewer may **not** operate a brewpub, and a brewpub operator may **not** obtain a brewer's permit under current law. Additionally, state statutes do not recognize an entity known or operating as a "winepub" or similar construction.

I hope that this information is helpful. Please do not hesitate to contact me with any questions that you may have.

Sincerely,



Michael Wagner
Legislative Advisor, Wisconsin Department of Revenue

cc: Assembly Committee on Homeland Security and State Affairs Members
Representative Garey Bies